

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Crl.MC.No. 2245 of 2007()

CRL.M.P.NO.280/07 IN ST.NO.1705/05 OF THE JFCM-IV, NEDUMANGAD.

PETITIONER: ACCUSED:

RAJENDRA BABU V.,
VRINDAVAN, ALAMCODE P.O., ATTINGAL.

BY ADV. SRI.M.DINESH

RESPONDENTS: COUNTER PETITIONER:

1. M/S. SREE GOKULAM CHITS AND
FINANCE CO.PVT.LTD.,REGD.OFFICE AT SREE GOKULAM
TOWERS,66,ARCOT ROAD,KADAMPAKKOM, CHANNAI,REP. BY
MANAGING DIRECTOR, A.M.GOPALAN THROUGH HIS P/A
HOLDER,S.PRADEEP,LEGAL CLERK,SREE GOKULAM CHIT &
FINANCE COMPANY LTD., NEDUMANGAD, TRIVANDRUM.
2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2245 OF 2007

Dated this the 12th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. The case filed in 2005 has now reached the stage of defence evidence. At the defence stage, the petitioner filed an application – obviously under Sec.245(2) of the Cr.P.C. to forward the cheque to the expert for opinion. The application was opposed. The learned Magistrate, by the impugned order, rejected the said prayer and the petitioner claims to be aggrieved by the impugned order.

2. The learned Magistrate was called upon to exercise the discretion under Sec.254(2) of the Cr.P.C. It has often been repeated that every request to forward the cheque to the expert made by the accused at the defence stage cannot and need not be accepted by the learned Magistrate. The learned

Magistrate must alertly apply his mind to decide whether the discretion under Sec.254(2) of the Cr.P.C. can be exercised in favour of the accused or not. Legion are the instances where the applications to forward the cheque to the expert is made and the course is resorted to solely for the purpose of ensuring protraction. Therefore it is incumbent that the learned Magistrate must consider the matter and exercise the discretion judicially and judiciously.

3. In the instant case, the signature in the cheque is not seen disputed. That the signed cheque was handed over to the complainant is also not disputed. The complainant has a case that the filled up cheque was handed over to the complainant by the accused. The accused has a case that it was a blank signed cheque which was handed over. The learned Magistrate considered the law on the relevant aspect and came to the conclusion that forwarding the cheque to the expert is not going to be of any material assistance for the resolution of the controversy in view of the peculiar facts and circumstances of this case. The learned counsel for the petitioner was requested to take me through the deposition of the complainant. I have been taken through such deposition. There is no specific assertion that the accused had made the entires in the cheque in

the handwriting of the accused in the presence of the complainant. That being so, the authorship of the writings is not going to be of any crucial assistance in the facts and circumstances of this case.

4. I do not intended to express any opinion on merits of the controversy raised. It is for the learned Magistrate to consider all such contentions and come to a proper conclusion while disposing of the prosecution finally. I need only observe that at the moment and with the available inputs I find absolutely no merit in the prayer to invoke the powers under Sec.482 of the Cr.P.C. against the impugned order. The impugned order is an interlocutory order. Law frowns upon the attempt to challenge the interlocutory orders during the pendency of the proceedings. This policy of law is reflected clearly in Sec.397(2) of the Cr.P.C. In view of the bar under Sec.397(2) of the Cr.P.C. against the invocation of the revisional powers, only in exceptional cases and for compelling reasons alone can the powers under Sec.482 of the Cr.P.C. be invoked to interfere with such an order.

5. In the result, this CrI.M.C. is dismissed. But I make it clear that I have not intended to express any opinion on merits of the factual controversy raised. It will be open to the petitioner to raise all relevant contentions before the learned Magistrate.

The petitioner's right to challenge the impugned order also along with the final judgment to be passed in the prosecution by the learned Magistrate shall remain unfettered.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge